IN THE HIGH COURT OF BOMBAY AT GOA
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CIVIL REVISION APPLICATION NO. 143 OF 2001

The Goa Urban Co-operative
Bank Ltd., Margao Goa Branch,
through its Chairman,
having its office at Dr.
Atmaram Borkar Road,
Panaji, Goa. ... Applcant.

Versus

1. M/s. Avelino Noronha
& Sons, a partnership
firm having its office
at House No. 219,
Veroda, Cuncolim,
Salcete, Goa, through
its partners, respondent
nos.2 to 4,

2. Mr. Joel Avelino Noronha,

3. Mr. Jobias M. Noronha
(since deceased),

4. Mr. Washington Noronha,

5. Mr. Arvind Saude Noronha,

6. Mr. Saude Noronha,

7. Mrs. Deutura Noronha,
all r/o Veroda, Cuncolim,
Salcete, Goa. ...Respondents.

Shri R. G. Ramani, advocate for the applicant.

Shri M. Amonkar, advocate for the respondents.

CORAM : D. G. KARNIK, J.

DATE : 24th March, 2004 and
5th April, 2004.

ORAL JUDGMENT

This revision application is directed against the Order of the learned Ist Additional Civil Judge, Senior Division, Margao, dated 27th March, 2001, recording a finding

on a preliminary issue that he had jurisdiction to entertain and try the Special Civil Suit No.71/2000/I filed by the respondents against the applicant Bank.

2. The facts giving rise to the suit are summarized below:-

The applicant Bank granted certain advances to the respondent no.1, of which respondent nos. 2 to 5 are the partners. Respondent nos. 6 and 7 were the guarantors who had guaranteed repayment of the advances granted to the respondent nos.1 to 5. As the loans were not repaid the applicant Bank filed a dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (for short "the Act") before the Registrar, who referred it for the decision to his nominee, Mr. Angle. After recording evidence and hearing the parties, the Registrar's nominee passed his Award on 11th November, 1986. An appeal bearing Appeal No.1/87 filed against the judgment of the Registrar's nominee was dismissed by the Co-operative Appellate Tribunal on 10th April, 1992. The Writ Petition bearing No. 393 of 1992, filed by the respondents challenging the judgment of the Co-operative Appellate Tribunal was dismissed on 23rd/24th April, 1997, and so was the Letters Patent Appeal. Special Leave Petition No.6245 of 1998 was also dismissed on 7th April, 1998.

3. On 31st March, 2000, the present suit bearing Special Civil Suit No. 71/2000/I, was filed by the respondent nos.1 to 7, alleging therein that Mr. Angle, the Registrar's nominee who first passed the Award on 11th November, 1986, was biased, inasmuch as he, in the past, had acted as a legal adviser/Advocate, of the applicant Bank and secondly, he was also its shareholder. It was alleged that Mr. Angle had not disclosed his interest before he heard the dispute, which vitiated the award made by him. In the suit, therefore, the respondents prayed that the award passed on 11th November, 1986, by Mr. Angle, nominee of the Registrar, be declared to be null and void and not binding on the respondents, and for further consequential reliefs, including return of the money recovered by the applicant Bank in pursuance of the said award. The applicant Bank filed its written statement resisting the suit filed by the respondents. It was, interalia, contended that the Civil Court had no jurisdiction to entertain and try the suit in view of Section 163 of the Act. After considering the pleadings of the parties, the learned Civil Judge, Senior Division, framed as many as fifteen issues out of which issue of jurisdiction was directed to be tried as a preliminary issue. Issue no.12 read as under:-

> "Whether this Court has got jurisdiction to decide the suit?"

By an Order dated 27th March, 2001, the learned Civil Judge,

Senior Division, answered the issue in the affirmative, holding that it had jurisdiction to entertain and try the suit, which decision is challenged in this Revision Application.

4. The real issue in this Revision Application, to my mind, is not whether the decision of the Registrar's nominee was biased, but whether the decision can be challenged in a collateral proceeding by way of a suit and whether the Civil Court has the jurisdiction to entertain such a suit. However, since the learned counsel for the respondents urged strenuously that the decision of the Registrar's nominee was biased, I would consider below the merits of allegation of bias.

5. "Bias" may be generally described as a partiality or preference. "Bias" is a preconceived opinion, predisposition or predetermination to decide a case or an issue in a particular manner, so much so that such predisposition does not leave the mind open to conviction. "Bias", is a condition of mind which sways judgment and renders a Judge unable to exercise impartiality in a particular case. To have a matter determined by an unbiased Judge or a Tribunal is an extension, if not a part, of the principles of natural justice, which require that no person shall be Judge in his own cause. Bias may take many forms. It may be pecuniary or non-pecuniary; personal or with regard

to the subject-matter of the dispute. In **Kihoto Hollohan vs. Zachillhu & Ors.,** reported in 1992 Supp.(2) SCC 651, the Supreme Court considered the case of even political bias, though on facts the charge of bias was held not proved. In **State of West Bengal & Ors. vs. Shivanand Pathak & Ors.,** (1998)5 SCC 513, the Supreme Court held judicial obstinacy could be a form of bias. It is not necessary to consider the various forms of bias for the purpose of this case. In the present case allegation of bias is pecuniary as well as personal. Pecuniary bias, because Mr. Angle was a share-holder of the applicant Bank, though the holding was negligible and small. It is also alleged that he, in the past, had acted as a legal adviser/advocate for the respondent Bank and, as such, had a personal bias. It is possible that either of the facts have not, in any way, influenced the decision making process or the award passed by the Registrar's nominee. It is, however, not necessary to show that bias has actually affected the decision; this is based on the adage that justice must not only be done but must be seen to have been done.

6. Learned counsel for the respondent referred to the decision of this Court in **Umanath Gopalkrishna Puthli vs. The Shamrao Vithal Co-operative Bank Ltd.,** reported in 1962 (Vol.64) Bom.L.R. 700. In that case the Division Bench held that a member of a Co-operative Appellate Tribunal was disqualified from hearing a dispute concerning the Bank of

which he was a shareholder. In such a situation, disclosure of an interest by the Judge would be good practice and on such disclosure, if any of the parties objects to his being associated with the case it would be an equally good practice that the Judge disassociates himself from the case. The learned counsel however submitted that in any event, the objection to a shareholder Judge hearing a lis can be waived as held in the aforesaid case itself and in the present case the objection was waived. I would deal with the aspect of waiver a little later.

7. It was also contended that the learned nominee of the Registrar, on a few occasions, in the past, had acted as a legal adviser/Advocate for the Bank. The mere fact that a Judge or Presiding Officer of the Tribunal had, in the past, acted as a lawyer in respect of large corporations, would not, by itself, disentitle him from deciding a dispute in which such corporation is a party. In case of large corporations, the relationship between the client and lawyer is usually impersonal. A busy lawyer, who later on becomes a Judge, may not even recollect the names of all his former clients especially individuals. In such a situation it is the duty of the parties and their counsel to point out to the Judge concerned that in the past, in some other matter or matters unconnected with the lis before him, the concerned Judge had represented or appeared for or had been consulted by any of the parties. If an objection is taken by any of the parties

to the his acting as such on that ground, it would be proper for the Judge to disassociate himself from the said case.

8. In most of the cases a Judge may have such a high character and integrity that both the parties to the dispute may agree, and may even want, that he should hear and adjudicate upon the dispute between them, even where he happens to be a shareholder, or has had some past professional relationship with either of the parties to the lis. In such a case the Judge would certainly be entitled to respond to the faith reposed in him and hear the dispute between the parties. Often, the disclosure made by the Judge about his interest is not recorded in the order and sometimes there is no other record of the disclosure. After having consented, expressly or impliedly, for the hearing before the Judge, it would be a bad taste for any of the parties to take advantage of absence of such record and allege, post decision, bias against the Judge.

9. In **Umanath Gopalkrishna Puthali vs. The Shamrao Vithal Co-operative Bank Ltd.** (supra), the Division Bench of this Court observed that the objection as to the bias (of the Judge being a shareholder) could be waived, though on facts it was held that it was not waived. It is, therefore, necessary to examine whether the respondents had waived objection regarding the bias. It is alleged that the Registrar's nominee had, in the past, acted as a legal adviser of the

applicant Bank. As a proof of this, learned counsel for the respondents invited my attention to the copy of the deed of mortgage executed by the respondents in favour of the Bank on 30th November, 1982, which is annexed to the Revision Application as Exh. A.3. It was pointed out that Mr. Angle, when he was a lawyer, had certified the document to be a "true copy". It was alleged that this endorsement proved that Mr. Angle was a legal adviser of the Bank. If so, the respondents were certainly aware that Mr. Angle, in the past, had been a legal adviser of the Bank and he had even certified the mortgage deed to be a true copy. Despite this, the respondents never raised any objection to Mr. Angle hearing the dispute. No grievance was also made about this before the Co-operative Appellate Court, or this Court hearing the Writ Petition and Letters Patent Appeal. This clearly shows that the respondents had consented either expressly or impliedly, to his acting as a Judge in the dispute between them, despite knowledge of the possible bias. Thus, the objection regarding the personal bias, against Mr. Angle being in the past a legal adviser of the applicant Bank, was waived by the respondents.

10. Mr. Angle was a shareholder of the applicant Bank and, therefore, had a pecuniary interest, though extremely small. Learned counsel for the respondents submits that Mr. Angle was, therefore, disqualified to hear the dispute. Learned counsel for the applicant submits that in

the present commercial world, if a Judge who is small shareholder of a large corporation is to be barred from trying a case, perhaps there will be no Judge available for trying a case involving large commercial Banks and Corporations. A Judge may possess credit card issued by a large Bank and as a credit card holder would be entitled to a period of credit of one month or so for the purchases made on his credit card. In that capacity, he may be a debtor of a Bank and would be said to have a pecuniary relationship and interest. In case of large corporations with a capital of billions of rupees a holder of shares of few hundred rupees would not be entitled to a dividend of even a fraction of a paise, in respect of profit arising out of a transaction which is the subject-matter of a lis. Therefore, submits the learned counsel, being a small shareholder of a large corporation or commercial Bank would not be a bar for hearing of a lis. The argument advanced by the learned counsel for the applicant may require consideration in a different matter. For the present case, I would assume that the Registrar's nominee had a pecuniary interest and, therefore, had a pecuniary bias. The question still required to be considered is, whether on account of such pecuniary bias his judgment can be said to be without jurisdiction?

11. There is no inherent lack of jurisdiction in a Judge to hear a dispute where he is a shareholder or had in the past been associated with any of the parties to the

dispute as an advocate. The objection to a Judge hearing the case on the ground of bias can be waived and if any authority is needed for this proposition, it can be found in the decision of the Supreme Court in **Manak Lal vs. Dr. Prem Chand,** reported in 1957 SCR 575. After waiving, expressly or impliedly, any objection to the constitution of a Tribunal on the ground of bias, the unsuccessful party cannot, later on, turn round and object to the decision on the ground of bias. The distinction between an impropriety in hearing a matter and inherent lack of jurisdiction to hear and decide the matter must be borne in mind. It is settled position that an objection to the jurisdiction cannot be waived by the parties. As stated earlier, if the parties can waive the objection relating to bias of a presiding Judge, the objection would not relate to the jurisdiction of the Judge, to hear the lis, otherwise it could never be waived. Hence, in my opinion, the objection regarding the bias raised by the respondents, does not relate to the jurisdiction, but relates to the propriety of the nominee of the Registrar to hear and decide the dispute. The judgment and award of the Registrar's nominee was, therefore, not without jurisdiction.

12. The next question to be considered is whether the Civil Court could, in a collateral proceeding, set aside the judgment and award of the Registrar's nominee, and confirmed upto the highest court, on the ground of bias. Sub-Section (3) of Section 163 of the Act, as applicable in

the State of Goa, reads as under:-

> (3) All orders, decisions or awards passed in accordance with this Act or the rules, shall subject to the provisions for appeal or revision in this Act be final; and no such order, decision or award shall be liable to be challenged, set aside, modified, revised or declared void in any Court upon the merits, or upon any other ground whatsoever except for want of jurisdiction." (Underlining supplied).

(The Maharashtra Co-operative Societies Act, 1960, was made applicable to the territory of Goa by the Goa, Daman and Diu (Laws) Regulation 1962, (No.12 of 1962), subject to certain modifications mentioned in the Schedule to the Regulation. The amendment to Section 163 made in the Maharashtra Co-operative Societies Act, in the year 1969 however, is not applicable to Goa and hence the Sub-Section (3) of Section 163 of the Act as applicable in the State of Goa is quoted above.)

13. Under Sub-section (3) of Section 163 of the Act, the award passed by the Registrar's nominee, subject to the provisions of appeal or revision, is final. The Section further specifically says that the judgment shall not be declared to be void in any Court, except for want of jurisdiction. As stated earlier, the judgment and award of the Registrar's nominee was not without jurisdiction. Maybe Mr. Angle ought not to have heard the matter on account of bias, but that does not make the award without jurisdiction.

The judgment and award of the Registrar's nominee, as confirmed by the Co-operative Appellate Tribunal and this Court, cannot be set aside in a collateral proceedings on the ground of want of jurisdiction on the ground that the Registrar's nominee was biased. By reason of Sub-section (3) of Section 163 of the Act, the Civil Court has no jurisdiction to entertain the suit as the award of the Registrar's nominee was not without jurisdiction.

14. The matter can be considered in yet another angle. The judgment and award of the Registrar's nominee was subjected to an appeal before the Co-operative Appellate Tribunal and was confirmed by it. On appeal, the judgment and award of the Registrar's nominee merged into the judgment of the Co-operative Appellate Tribunal, which itself merged into the judgment rendered by this Court in Writ Petition No.393/92. That merged into the judgment passed by the Division Bench in Letters Patent Appeal No.14 of 1997. Therefore, what stands in law is not the judgment and award of the Registrar's nominee, but the judgment and order of this Court. The Civil Court, therefore, does not have a jurisdiction to declare the non-existent judgment as without jurisdiction, especially because the judgment of this Court is not alleged to be without jurisdiction.

15. In the circumstances, the revision application is allowed and it is held that the Civil Judge, Senior

Division, Margao, had no jurisdiction to entertain the suit. Consequently, the suit stands dismissed.

D. G. KARNIK, J.

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